

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

COMMSCOPE, INC.,	.
	.
Plaintiffs,	.
	. Case No. 19-cv-15962
vs.	.
	. Newark, New Jersey
ROSENBERGER TECHNOLOGY	. November 17, 2021
KUNSHAN CO., LTD., et al.,	.
	.
Defendants.	.

TRANSCRIPT OF HEARING: COURT'S RULING
BEFORE THE HONORABLE LEDA DUNN WETTRE
UNITED STATES MAGISTRATE JUDGE

This transcript has been reviewed and revised in accordance with L. Civ. R. 52.1.

This transcript has been **REDACTED (AVAILABLE FOR ALL PARTIES AND THE PUBLIC)** pursuant to Loc. Civ. R. 5.3(c)(2).

APPEARANCES (the parties appeared via teleconference):

For the Plaintiffs: EDWARD SPONZILLI, ESQ.
Norris McLaughlin, PA
400 Crossing Boulevard, 8th Floor
PO Box 5933
Bridgewater, NJ 08807-5933
(908) 722-0700
egsponzilli@norris-law.com

Audio Operator:

Transcription Service: KING TRANSCRIPTION SERVICES
3 South Corporate Drive, Suite 203
Riverdale, NJ 07457
(973) 237-6080

Proceedings recorded by electronic sound recording; transcript produced by transcription service.

1 (APPEARANCES continued)

2 For the Plaintiffs: RANDALL KAHNKE, ESQ.
3 Faegre Drinker Biddle & Reath LLP
4 2200 Wells Fargo Center
5 90 South Seventh Street
6 Minneapolis, Minnesota 55402,
7 (612) 766-7658
8 Randall.kahnke@faegredrinker.com

6 HARMONY A. MAPPES, ESQ.
7 Faegre Drinker Biddle & Reath LLP
8 300 N. Meridian Street
9 Suite 2500
10 Indianapolis, Indiana 46204
11 (317) 237-8246
12 Harmony.mappes@faegredrinker.com

10 TYLER A. YOUNG, ESQ.
11 Faegre Drinker Biddle & Reath LLP
12 2200 Wells Fargo Center
13 90 South Seventh Street
14 Minneapolis, Minnesota 55402
15 (612) 766-8610
16 Tyler.young@faegredrinker.com

14 LAUREN W. LINDERMAN, ESQ.
15 Faegre Drinker Biddle & Reath LLP
16 2200 Wells Fargo Center
17 90 South Seventh Street
18 Minneapolis, Minnesota 55402
19 (612) 766-7251
20 lauren.linderman@faegredrinker.com

18 RACHEL L. CARDWELL, ESQ.
19 Faegre Drinker Biddle & Reath LLP
20 1717 Main St., Ste. 5400
21 Dallas, Texas 75201,
22 (612) 766-6971
23 rachel.cardwell@faegredrinker.com

22 CHRISTOPHER S. KWELTY, ESQ.
23 Norris McLaughlin, P.A.
24 400 Crossing Boulevard
25 Bridgewater Township, NJ 08807
(908) 252-4209
cskwelty@norris-law.com

1 (APPEARANCES continued)

2 For the Plaintiffs: ANNA E. SALLSTROM, ESQ.
Faegre Baker Daniels LLP
3 2200 Wells Fargo Center
90 S. Seventh Street
4 Minneapolis, Minnesota 55402
(612) 766 7614
5 anna.sallstrom@FaegreBD.com

6 NATHANIEL J. ZYLSTRA, ESQ.
Faegre Baker Daniels LLP
7 2200 Wells Fargo Center
90 S. Seventh Street
8 Minneapolis, Minnesota 55402
Nathaniel.zylstra@faegredrinker.com
9 (612) 766-6908

10 KELLY J. FERMOYLE, ESQ.
Faegre Baker Daniels LLP
11 2200 Wells Fargo Center
90 S. Seventh Street
12 Minneapolis, Minnesota 55402
(612) 766-7207
13 Kelly.fermoyle@faegredrinker.com

14 DENNIS C. BREMER, ESQ.
Carlson Caspers Vandenburg &
15 Lindquist, PA
Capella Tower, Suite 4200
16 225 South Sixth Street
Minneapolis, MN 55402
17 (612) 436-9614
Dbremer@carlsoncaspers.com
18

19 For the Defendants: MATTHEW M. OLIVER, ESQ.
Lowenstein Sandler LLP
20 One Lowenstein Drive
Roseland, New Jersey 07068
21 (212) 419-5852
Moliver@lowenstein.com
22
23
24
25

1 (APPEARANCES continued)

2 For the Defendants: Y. JOHN LU, ESQ.
Milbank LLP
3 2029 Century Park East, 33rd Floor
Los Angeles, CA US 90067-3019
4 (424) 386-4318
jlu@milbank.com

5 KIM GOLDBERG, ESQ.
6 Milbank LLP
55 Hudson Yards
7 New York, NY US 10001-2163
(212) 530-5412
8 kgoldberg@milbank.com

9 DAVID I. GINDLER, ESQ.
Milbank LLP
10 2029 Century Park East, 33rd Floor
Los Angeles, CA 90067-3019
11 (424) 386-4313
Dgindler@milbank.com

12 BRADLEY HERSHON, ESQ.
13 Milbank
55 Hudson Yards
14 New York, NY 10001-2163
(212) 530-5241
15 bhershon@milbank.com

16 HALEY LING, ESQ.
Milbank LLP
17 55 Hudson Yards
New York, NY US 10001-2163
18 (212) 530-5115
Hling@milbank.com

19 MATTHEW J. GRIER, ESQ.
20 Milbank LLP
55 Hudson Yards
21 New York, NY US 10001-2163
(212) 530-5597
22 Mgrier@milbank.com

23

24

25

1 (APPEARANCES continued)

2 For the Defendant MARK S. PINCUS, ESQ.
3 CellMax Pincus Law LLC
Technologies AB: 90 Broad Street, 23rd Floor
New York, NY 10004
4 (212) 962-2900
Mark@pincus-law.com
5

6

7

8

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1 (Commencement of proceedings)

2

3 THE COURT: Good afternoon, Counsel. This is
4 Magistrate Judge Wettre. We're on the record in CommScope
5 Inc. versus Rosenberger Technology, et al. 19-CV-15962.

6 May I have appearances, please, starting with the
7 plaintiff.

8 MR. SPONZILLI: Edward Sponzilli from Norris
9 McLaughlin, local counsel to plaintiff CommScope.

10 THE COURT: Good afternoon.

11 MR. SPONZILLI: Good afternoon, Your Honor.

12 MR. KAHNKE: Also on behalf of CommScope, this is
13 Randy Kahnke. With me are my colleagues Lauren Linderman,
14 Harmony Mappes, Tyler Young, Nathaniel Zylstra, Anna
15 Sallstrom, Kelly Fermoye, and Rachel Cardwell. As we have
16 done in the past, Your Honor, we have associates along with
17 Ms. Linderman and myself who will be arguing today -- and we
18 understand the Court's guidance here -- in a very short
19 manner.

20 THE COURT: Okay. Thank you.

21 And Mr. Sponzilli --

22 (Simultaneous conversation)

23 THE COURT: Do you have Mr. Kwelty with you? I
24 have him on my appearance sheet.

25 MR. SPONZILLI: He's on the call, I believe,

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1 Your Honor. But he's not in the same room with myself.

2 THE COURT: Okay.

3 MR. SPONZILLI: He's calling in remotely.

4 THE COURT: All right. Very good.

5 MR. BREMER: And, Your Honor, I apologize. This is
6 Dennis Bremer also on behalf of CommScope. I just entered my
7 appearance pro hac vice within last week or so.

8 THE COURT: Okay. Welcome.

9 MALE SPEAKER: Thank you.

10 THE COURT: All right. And for the Rosenberger
11 defendants?

12 MR. OLIVER: Good afternoon, Your Honor. This is
13 Mathew Oliver from Lowenstein Sandler LLP.

14 THE COURT: Good afternoon.

15 MR. GINDLER: And, good afternoon, Your Honor.
16 This is David Gindler from Milbank. With me are John Lu, Kim
17 Goldberg, Bradley Hershon, Mathew Grier, and Haley Ling.
18 We're all here on behalf of the Rosenberger defendants and
19 also on behalf of CellMax Technologies. Also representing
20 CellMax Technologies on the call is Mark Pincus of Pincus
21 Law.

22 THE COURT: Okay. Good afternoon to all of you.

23 So did we miss anyone?

24 Hearing nothing, I will assume not.

25 So, Counsel, I have, as you know, already had many

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1 lengthy hearings resolving an extensive number of written
2 discovery disputes that the parties have presented to me.
3 So -- and by order -- by my order of several months ago, I
4 had barred any further written discovery requests from being
5 propounded without leave of Court.

6 So this will be the last written discovery dispute
7 the Court will entertain. And as I said off the record, I
8 need to keep this hearing relatively short due to the other
9 demands of my schedule.

10 So I don't feel the need for oral argument and
11 would only allow a minute or two per side if the parties, you
12 know, really insist on being heard. Otherwise, I'm prepared
13 to rule on each issue that was outlined and extensively
14 briefed in your joint discovery dispute statement.

15 So let me turn to the first issue, CommScope
16 Issue Number 1, which is essentially that CommScope demands
17 that Rosenberger -- the Rosenberger defendants now produce
18 all of their BSA design files.

19 Anything, briefly, that CommScope would like to add
20 that's not redundant of their written submission?

21 MR. KAHNKE: Your Honor, this is Randy Kahnke.
22 I'll be very brief.

23 We have proceeded in an incremental, step-by-step
24 manner. We have focused on the [REDACTED] that [REDACTED]
25 [REDACTED] in the five

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1 categories that were the subject of the Court's September 21
2 order. We have produced and identified in our interrogatory
3 responses [REDACTED]

4 [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 Your Honor, we respectfully request that we be
10 given access to all of the Rosenberger BSA design files so
11 that we can now determine the extent, scope, and breadth of
12 the misappropriation.

13 And happy to answer any questions the Court may
14 have.

15 THE COURT: Okay. Thank you, Mr. Kahnke.

16 Anything from Rosenberger?

17 MR. LU: Yes, Your Honor. This is John Lu. Just
18 very briefly.

19 We have already produced long ago to CommScope [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 [REDACTED]

23 [REDACTED] We've already produce [REDACTED]

24 [REDACTED]

25 So CommScope has had at its disposal a lot of

1 discovery, already, related to hardware. This is not
2 incremental discovery. CommScope has not pointed to any new
3 information we've produced as a result of its motion to
4 compel. So it had a successful motion to compel. There is
5 nothing -- there was nothing there. And so now CommScope is
6 fishing just for exponential magnitudes more discovery of
7 design files.

8 As we said in the letter, it would be an
9 extraordinary and very time-consuming burden to manually
10 search for and download [REDACTED] and would
11 require -- likely require an extension of the schedule. It
12 would just be a hugely burdensome undertaking to try and find
13 all design files for all BSAs that Rosenberger has ever
14 designed.

15 THE COURT: Okay. Thank you, Mr. Lu.

16 So Federal Rule of Civil Procedure 26 provides --
17 provides that the scope of discovery is limited to relevant
18 and proportional information. During the course of many
19 months of discovery, the Court has required Rosenberger to
20 produce [REDACTED], after determining
21 through painstaking analysis and extensive -- and after
22 extensive submissions from the parties, that such files may
23 be relevant and proportional.

24 And here I incorporate by reference my rationale
25 for the prior decisions, which are the foundation for today's

1 decision on this expanded request by CommScope.

2 CommScope's request for the number of design files
3 ordered to be produced be increased to all files pertaining
4 to Rosenberger's BSAs, [REDACTED]

5 [REDACTED],

6 according to Rosenberger, is -- this Court finds

7 disproportional within the meaning of Rule 26. CommScope

8 offers little to justify its demand for discovery of this

9 extreme breadth. Although it points to [REDACTED]

10 [REDACTED] found in

11 the extensive information the Court has already ordered

12 Rosenberger to produce, there is little more than CommScope's

13 suspicions that the misappropriations go further to justify a

14 further search of the broad scope proposed by CommScope now.

15 And there appears to be little, if anything, that CommScope

16 recently discovered -- and that is since the last extensive

17 round of submissions -- that would justify this additional

18 request. And the request is accordingly denied.

19 Okay. Moving on to CommScope's Issue Number 2,

20 CommScope contends Rosenberger has failed to comply with the

21 Court's September 21st, 2021, order instructing Rosenberger

22 to [REDACTED]

23 [REDACTED]

24 Anything further from CommScope on this issue?

25 MS. LINDERMAN: Hi, Your Honor. This is Lauren

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1 Linderman on behalf of CommScope.

2 Just in brief, I think the heart of the parties'
3 dispute here is that Rosenberger agrees that it's obligated
4 to be producing [REDACTED]

5 [REDACTED]. But it is refusing
6 and viewing it outside the scope of the Court's order [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 And especially in light of the fact that they
10 produced [REDACTED]
11 [REDACTED], we think that their view of the Court's
12 order is unreasonably limited, if -- and that because of the
13 fact that they're planning to raise a [REDACTED]

14 [REDACTED]

15 [REDACTED], those BSAs should be within the
16 scope of Court's prior order as well.

17 Thank you.

18 THE COURT: Okay. Thank you, Ms. Linderman.

19 Anyone from Rosenberger wish to be heard.

20 MR. LU: Hi, Your Honor. This is John Lu again. I
21 will be brief as well.

22 Rosenberger has produced or offered to make
23 available [REDACTED]

24 [REDACTED]

25 [REDACTED]

1 [REDACTED] and we sent a letter to CommScope on that.

2 Rosenberg understood the Court's order to make
3 available for inspection [REDACTED]

4 [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 [REDACTED] Rosenberg did not
15 understand Your Honor to order [REDACTED]

16 [REDACTED]

17 [REDACTED].

18 THE COURT: Okay. Thank you, Mr. Lu. So, first, I
19 have to observe that the parties' submissions demonstrate
20 that they've complicated this issue almost beyond the Court's
21 understanding and almost beyond the Court's recognition of
22 its own order on this issue.

23 In any event, having carefully read both sides'
24 submissions on this issue and striving to understand it,
25 having read the submissions several times, the Court does

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1 find sufficient Rosenberger's proposal to produce an
2 additional Rosenberger BSA model for inspection [REDACTED]

3 [REDACTED]

4 [REDACTED]

5 [REDACTED]

6 [REDACTED]. The Court believes that allowing CommScope to
7 examine altogether [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 Okay. Turning to the Rosenberger issues,
12 Mr. Oliver had advised my chambers in response to my request
13 to both parties, that Rosenberger Issue 1 is moot. So the
14 Court turns to Rosenberger Issue 2.

15 Rosenberger contends that CommScope refuses to
16 provide "date information" about third-party distribution of
17 alleged hardware trade secret design files, which files were
18 distributed, and to whom."

19 CommScope remarks that this issue is not ripe.

20 So here I would like the parties to give me an
21 update on this in whichever order makes sense.

22 MS. GOLDBERG: Yes, Your Honor, this is Kim
23 Goldberg from Milbank.

24 THE COURT: Yes, hi, Ms. Goldberg.

25 MS. GOLDBERG: Hello. We have an interrogatory out

1 to CommScope that seeks the identification of each third
2 party to whom it disclosed any alleged trade secret, the date
3 or dates of each disclosure, and each alleged trade secret
4 disclosed.

5 So as we've explained in our submission, this is a
6 significant issue, because discovery in the expedited phase
7 shows that CommScope distributed its alleged trade secret
8 software program to third parties without adequate or
9 sometimes any protection.

10 So looking at each and every distribution is very
11 important because if any of those distributions lack
12 reasonable measures of protection, that could be fatal to
13 CommScope's ability to claim trade secret protection for that
14 information.

15 So we did receive amended responses from CommScope
16 since the parties' joint submission, but that response
17 appears to remain inadequate. So number one --

18 THE COURT: May I ask you, were documents produced
19 in satisfaction of the interrogatory? Or was there an
20 attempt to answer the interrogatory as such?

21 MS. GOLDBERG: So CommScope [REDACTED]
22 [REDACTED]
23 [REDACTED]

24 So the Question Number 1 is whether that
25 information that they have provided to us includes each and

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1 every distribution --

2 THE COURT: Okay.

3 MS. GOLDBERG: -- of these parts.

4 THE COURT: And does it represent -- I mean, it
5 wasn't provided, the answer itself, though I could -- as far
6 as I know, and I looked through all the exhibits. So I
7 wasn't able to tell if CommScope represented that was all
8 there was or if they were still in progress.

9 What can you tell me about that?

10 MS. GOLDBERG: [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 [REDACTED] It's not clear to us that we've received
15 that, and we think we're entitled to it.

16 THE COURT: Okay. Got it.

17 So let me hear from CommScope on this.

18 MS. GOLDBERG: Did you want to handle that issue?
19 Or should I raise a couple of other points?

20 THE COURT: No, I want to hear what CommScope says,
21 because they contended that the issue was unripe, so I'm
22 mainly focusing on that.

23 MR. FERMOYLE: Thanks, Your Honor. This is Kelly
24 Fermoye on behalf of CommScope, and I'll take this issue.

25 THE COURT: Yeah --

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1 MR. FERMOYLE: Your Honor -- yeah, thank you.

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10 THE COURT: Okay. So CommScope would say that they
11 have provided this information. To the extent it's available
12 after a reasonable search, it's provided all the information.

13 MR. FERMOYLE: Yes, Your Honor.

14 THE COURT: Okay. So what's wrong with that,
15 Ms. Goldberg?

16 MS. GOLDBERG: So, number one, we're happy to hear
17 that they believe they've [REDACTED]
18 [REDACTED] So that's helpful in that
19 regard.

20 But what also seems to be missing and which we've
21 raised from them is that [REDACTED]
22 [REDACTED], which are
23 alleged to be the trade secrets. And we've asked CommScope
24 to amend their response [REDACTED], which,
25 you know, matters to the extent that there might have been

1 [REDACTED]
2 [REDACTED]
3 We've also asked them to identify by Bates numbers,
4 the documents constituting these distributions or reflecting
5 the distributions, but [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED] which they haven't done or agreed to
9 do.

10 THE COURT: Okay. So it sounds like CommScope now
11 represents -- if it wasn't clear before, they've said so on
12 the record -- that they've provided all responsive
13 information, and the rest of it is cleanup. So I'm going to
14 count on counsel to do that themselves. That's pretty far in
15 the weeds for the -- you know, this discovery dispute hearing
16 from me. So I think this is satisfactorily resolved, and
17 counsel can work with one another so that they're -- you
18 know, Rosenberger is -- can find the information readily and
19 can test bona fides of whether, in fact, all the
20 information's been produced.

21 Turning to Rosenberger Issue 3 Rosenberger seeks
22 inspection of CommScope BSAs containing "alleged hardware
23 trade secrets," which was requested by its RFP Number 89,
24 which I note was served without Court leave after the date,
25 the cut-off date the Court gave.

1 Anything Rosenberger wishes to add?

2 MR. LU: This is John Lu, Your Honor. Very
3 briefly.

4 So I just want to clarify that we also served
5 Requests For Production Numbers 87 and 88, which --

6 THE COURT: Right. And CommScope said they weren't
7 going to object to the timeliness of that, but they didn't
8 say that as to 89.

9 MR. LU: Correct. Okay. Yes, Your Honor.

10 And for 89, we have limited the scope to
11 representative models only if CommScope argues that its --
12 that a particular part or that information [REDACTED]
13 [REDACTED]. So Request Number 89 is very
14 limited in scope. And we do request leave to serve 89.

15 THE COURT: Okay.

16 Counsel?

17 MS. LINDERMAN: Thank you, Your Honor. This is
18 Lauren Linderman on behalf of CommScope.

19 We disagree that Request Number 89 is all limited
20 in scope. As we mentioned in our papers, as we understand
21 what Mr. Lu just articulated as their new narrower
22 interpretation of the request, it still necessarily
23 encompasses many, many hundreds, if not over 2,000 base
24 station antennas. And so we continue to object to their
25 request for leave to file that request.

1 And I will just add that Rosenberger has at its
2 fingertips through the information that we've already
3 produced in our interrogatory responses, the information it
4 needs if it would like to craft a more narrowly tailored
5 request for specific BSAs containing specific components.
6 But as crafted, we certainly object to something that's
7 asking for potentially over 2,000 BSAs to be produced at this
8 late stage of the case.

9 THE COURT: Okay. Thank you.

10 So the Court is denying this request. First of
11 all, it was served after the Court's clearly announced
12 cut-off date for serving new discovery demands. Second, the
13 Court is not convinced that the demand even seeks relevant
14 and proportional evidence. Rosenberger explains that it
15 seeks to explore CommScope's assertion during prior motion
16 practice that certain of its trade secret hardware
17 information [REDACTED]

18 [REDACTED] Rosenberger wants to test this theory.

19 To take a step back and put it in the context in
20 which it arises, CommScope alleges that -- as I understand
21 it -- that similar parts in Rosenberger's BSAs are the result
22 of trade secret theft. [REDACTED]

23 [REDACTED] Rosenberger says not so. [REDACTED]

24 [REDACTED] which does
25 not constitute trade secret theft.

1 CommScope responds -- or seems to respond -- that
2 Rosenberger could not have [REDACTED]
3 through legitimate means because it is simply not possible.

4 On the fourth round of this argument, Rosenberger
5 contends it should be able to examine CommScope's BSAs to see
6 if the parts in them [REDACTED].

7 The Court finds that each round of this argument
8 becomes of diminishing relevance. And taking the fourth step
9 of this ping-ponging debate as a reason to start doing BSA
10 inspections that were not timely requested at this late stage
11 of discovery is squarely disproportional within the meaning
12 of Rule 26. So that is denied.

13 Finally, Rosenberger Issue 4, whether CommScope's
14 productions of its BSA business reports and presentations is
15 complete.

16 Here I'm going to say at the outset, CommScope says
17 in many ways and says it said so after -- over numerous
18 iterations that it has produced all information it could
19 locate after a reasonable search and has represented that in
20 writing.

21 So is this dispute about Rosenberger's request that
22 CommScope fill in a 33-page checklist?

23 Mr. Lu or whomever from Rosenberger, do you want to
24 respond?

25 MS. GOLDBERG: Yes, Your Honor. This is Kim

1 Goldberg from Milbank.

2 So what the dispute is about is the -- CommScope's
3 compliance with what we understood to be Your Honor's ruling
4 at the last conference, which was to identify by Bates number
5 what is provided that Rosenberger still thinks is missing,
6 and state where it's the case, there is nothing available to
7 provide.

8 So, you know, we -- we spent -- we put together a
9 list of everything that we thought was missing, and sent it
10 to them basically to be very clear about what exactly we
11 thought was missing. And for them to indicate the extent to
12 which certain of those reports don't exist or weren't able to
13 be found after their search.

14 So, you know, we've gotten back, you know, very
15 broad Bates range identifications and saying, you know, we've
16 produced what we've been able to find. See these, you know,
17 [REDACTED].

18 What we're asking for is what we understood the
19 Court to order, which is that to the extent we've pointed to
20 a report that, you know, we think is missing, for them to
21 actually say here's the Bates number for that report; it's
22 not missing after all. Or to say that something just doesn't
23 exist.

24 THE COURT: All right.

25 CommScope?

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1 MS. CARDWELL: Thank you, Your Honor. This is
2 Rachel Cardwell for CommScope, and I'll be taking this issue.

3 To keep it brief, CommScope has complied with the
4 Court's directives. CommScope has provided the Bates range,
5 produced the documents found in a reasonable search, and
6 confirmed that we do not have any further documents to
7 produce. We have nothing else to do here.

8 In our view, Rosenberger's 33-page checklist is
9 make-work that is not required under the federal rules and,
10 we do not believe, within the scope of your September 21st
11 order.

12 That's it, I think, from our end, but happy to
13 answer any questions, if you have them.

14 THE COURT: No. I agree with CommScope on this.
15 So I'm denying Rosenberger's request.

16 All right. That all the issues I have.

17 Anything else the parties wish to discuss by way of
18 case management? --

19 (Simultaneous conversation)

20 MR. LU: Your Honor, this is John Lu from
21 Rosenberger.

22 I just wanted a quick clarification on Issue
23 Number 3 about the RFPs, that late-served RFP.

24 So Rosenberger's RFP Number 87 and 88, which
25 CommScope did not object to, those are okay. Correct?

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1 THE COURT: That wasn't presented to me. I am not
2 going to comment on it. What parties agree to produce
3 consensually, is none of my business.

4 MR. LU: Okay. Thank you, Your Honor.

5 MR. KAHNKE: Your Honor.

6 THE COURT: Yeah.

7 MR. KAHNKE: Randy Kahnke on behalf CommScope.

8 With respect to Issue 1, the request for production
9 of additional Rosenberger design files, respectful of the
10 Court's ruling on this issue and would respectfully respect
11 leave to file a formal motion to compel on that front.

12 THE COURT: I don't understand. You want to
13 reiterate?

14 MR. KAHNKE: We would like to file a formal motion
15 to compel on it, Your Honor, that gets into the full basis
16 for, as opposed to what was presented in the joint discovery
17 dispute statement in very summary fashion, get into the full
18 basis for our reason seeking this information and its
19 relevance to the case.

20 THE COURT: Okay. That could have been requested
21 before I spent my time looking through this.

22 So I'll have the same issue again. I'll grant you
23 leave to do that.

24 But let me be very clear: Discovery will not be
25 extended. You are to go forward with depositions. You are

1 to hold nothing, not fact depositions, not expert discovery
2 for my ruling on this issue. I've spent a lot of time
3 focusing on design files. You started with a request for
4 all, and it was out of line. And I've given information,
5 increasing amounts of information as it appeared to be
6 proportional to the issues. So I think you merely disagree.
7 And -- but you may brief it again formally and submit
8 whatever you like. Everyone has the right to be heard.

9 But it's -- it's not to hold up anything further in
10 the case.

11 MR. KAHNKE: Understood, Your Honor. We appreciate
12 that.

13 Regarding other issues, Mr. Sponzilli sent you a
14 letter yesterday -- we tried to keep it to one paragraph --
15 about deposition issues.

16 I just note -- I might note on that front,
17 Your Honor, that Rosenberger has suggested, we hear you loud
18 and clear about moving forward with depositions, moving
19 forward with expert work. Rosenberger has suggested that it
20 may be appropriate because of -- -related issues to
21 consolidate or coordinate the depositions of China-based
22 witnesses in the trade secret case and the patent case
23 pending in Delaware. The patent case has a discovery -- a
24 fact discovery cut-off that's two months later than ours.
25 And so I just flag that issue for the Court, again, hearing

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1 you loud and clear on that, Your Honor, but just want to make
2 you aware of that -- that issue regarding timing.

3 And then also, if we could get some guidance from
4 you. We're work -- the parties are working through this
5 issue regarding the number of depositions that may be
6 appropriate in this case. We hope to get that wrestled to
7 the ground very promptly, if at all possible. But if that is
8 not possible, we would appreciate guidance from Your Honor
9 about how to proceed on that front procedurally.

10 THE COURT: Okay. Well, our Local Civil Rule 37.1
11 is how you're supposed to present the issues that you've
12 reached impasse on.

13 MR. KAHNKE: Okay. Appreciate that.

14 THE COURT: All right. So I'll see what you submit
15 on depositions.

16 Anything further?

17 MR. KAHNKE: Not from CommScope, Your Honor.

18 MR. OLIVER: Not from Rosenberger and CellMax.

19 THE COURT: Okay. Very good.

20 Have a good day, everyone.

21 UNIDENTIFIED SPEAKERS: Thank you.

22 (Conclusion of proceedings)

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Certification

I, SARA L. KERN, Transcriptionist, do hereby certify that the 28 pages contained herein constitute a full, true, and accurate transcript from the official electronic recording of the proceedings had in the above-entitled matter; that research was performed on the spelling of proper names and utilizing the information provided, but that in many cases the spellings were educated guesses; that the transcript was prepared by me or under my direction and was done to the best of my skill and ability.

I further certify that I am in no way related to any of the parties hereto nor am I in any way interested in the outcome hereof.

s/ *Sara L. Kern*

19th of November, 2021

Signature of Approved Transcriber

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Sara L. Kern, CET**D-338
King Transcription Services
3 South Corporate Drive, Suite 203
Riverdale, NJ 07457
(973) 237-6080